

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CINDY A GRILL
Claimant

APPEAL NO: 12A-UI-03044-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NELLIS MANAGEMENT COMPANY
Employer

OC: 01/22/12
Claimant: Appellant (1)

Section 96.5-3 – Able and Available
871 IAC 24.22j(1),(2),(3) – Leave of Absence

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 15, 2012, reference 02, that held she was voluntarily unemployed due to a leave of absence on January 22, 2012, and which denied benefits. A telephone hearing was held on April 10, 2012. The claimant participated. John Blanchard, area supervisor, participated for the employer.

ISSUES:

Whether the claimant is able and available for work.

Whether claimant is on a leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer from January 14, 2010 to about December 20, 2011. She last worked as a full-time crew chief/shift manager. She informed the employer she needed left arm surgery for a non-work-related injury to her elbow. The employer took her off the work schedule and held her job open. The parties expected she would be off anywhere from one to two weeks.

After the December 20 surgery, claimant was released to return to work with a restriction she not use her left arm. The employer responded claimant needed to be able to lift at least ten pounds with her arm, and she needed to have the restriction comply with that requirement.

Claimant required a second surgery on March 1, and the doctor-imposed no use of left arm restriction was not changed. Claimant has been participating in therapy, and has a doctor appointment on April 11. She is hoping the doctor will modify the left arm restriction to one that allows her to lift at least ten pounds, and that the employer is willing to return her to work on this basis.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The administrative law judge concludes the claimant is not presently able to perform all of her job duties due to a doctor restriction involving a non-work-related injury and surgery. The claimant is on an extended medical leave of absence until she is able to return work within the ten pound lifting restriction. Benefits are denied, as claimant is not able and available for work.

A leave of absence is a disqualifying period of unemployment, because the employee is unable to perform all of the required job duties. While the leave gives claimant the benefit of her job being held open by the employer until she meets the work restriction, it is a period where she is denied unemployment benefits.

DECISION:

The department decision dated March 15, 2012, reference 02, is affirmed. The claimant is on a medical leave of absence from December 20, 2011 that is a voluntarily period of unemployment where she does not meet the availability requirements of the law. Benefits are denied effective January 22, 2012.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw